

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1206 CUTTACK, FRIDAY, AUGUST 25, 2006 / BHADRA 3, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st August 2006

No. 7041—li/I -150/1987(Pt.)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th June 2006 in Industrial Dispute Case No. 8 of 1988 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of General Manager (Works), Konark Jute Limited, At/P.O. Dhanmandal, Dist. Cuttack and its workman Shri Subal Charan Mohanty, C/o Shri Laxmidhar Mohanty, At/P.O. Baripada, Dist. Mayurbhanj was referred for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 8 OF 1988

Dated the 28th June 2006

Present:

Shri P. K. Sahoo, o. s. j. s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between:

The General Manager (Works)	... First Party—Management
Konark Jute Limited	
At/P.O. Dhanmandal, Dist. Cuttack.	
And	
Shri Subal Charan Mohanty	... Second Party—Workman
C/o Shri Laxmidhar Mohanty	
Municipal Market	
At/P.O. Baripada, Dist. Mayurbhanj.	

Appearances :

For First-Party Management	.. Shri N. K. Mishra, Advoacate
For the Second-Party Workman	.. Shri S. B. Mishra, Advocate

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No.1802(3)-LE., dated the 15th February 1988 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

"Whether the dismissal of Shri Subal Charan Mohanty, Store Clerk from service by the management of M/s. Konark Jute Limited, Dhanmandal with effect from the 22nd December 1984 is legal and/or justified ? If not, what relief Shri Mohanty is entitled ?"

3. Workman Shri Subal Charan Mohanty by way of this reference has challenged the legality and justifiability of the action of the management of M/s. Konark Jute Limited, Dhanmandal (in short the management) in dismissing him from service with effect from the 22nd December 1984.

Matrix of the necessary facts as bear on the controversy involved in the present case is that the workman was initially appointed under the management of M/s. Industrial Development Corporation of Orissa, Bubaneswar and subsequently came on transfer to the present management and continued as such as an employee of I.D.C. up to the 31st October 1971. During such tenure he was pressed by the management of I.D.C. and the present management to resign from I.D.C. and to accept fresh appointment under the present management . Finding no other alternative the workman accepted the proposal with the condition that his last pay and other benefits under I.D.C. would be protected which was also agreed upon by the present management. Thereafter the workman submitted his resignation which was accepted by the management of I.D.C. vide letter No. 19363, dated the 29th October 1975 and thereafter he was appointed afresh as a Store Clerk under the management vide letter No. 756, dated the 1st November 1975 without any interruption in his service. He continued to work as such with much sincerity, devotion and to the utmost satisfaction of the authority without any stigma to his service career. Subsequently due to his union activities the management bore grudge on him and was looking for an opportunity to put him in trouble. It is further averred in the statement of claim that the management clamped a lock-out with effect from the 11th October 1983 which continued up to the 24th April 1984. The said lock-out was lifted in a phased manner with effect from the 25th April 1984 by entering into a settlement with some office bearers of Konark Jute Shramika Congress. The said settlement was signed during the period of lock-out taking advantage of the adversity of the general workers due to prolonged lock-out. Major changes were also made in the service conditions of the workman. The concerned workman while criticising the policy of the management had also opposed the so called recognised union such as, Konark Jute Shramika Sangha in the matter of prolonged lock-out and the settlement. During the priod of lock-out a charge-sheet came to be issued against the workman vide letter No. 3638, dated the 2nd February 1984 regarding negligence of duty, unauthorised absence and leaving the duty place prior to the period of lock-out. Thereafter the workman

submitted his explanation on the 15th March 1984 denying the charges levelled against him. The management being not satisfied with the explanation submitted by the workman placed him under suspension and initiated a domestic enquiry by appointing Shri J. K. Tripathy as an Enquiring Officer to enquire into the charges levelled against him. During enquiry all the charges levelled against the workman were duly proved and basing on the enquiry report submitted by the Enquiring Officer, the management vide its letter No. 3710, dated the 22nd December 1984 passed final order of dismissal and the workman was dismissed from service with effect from the 22nd December 1984. According to the workman, the charges levelled against him were all false, baseless, concocted, fictitious and *mala fide*. The enquiry conducted by the Enquiring Officer was also not fair and proper and in violation of the principles of natural justice. He approached the labour machinery but to no avail. The conciliation proceeding ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. It is categorically averred by the workman in the statement of claim that the action of the management in dismissing him from service with effect from the 22nd December 1984 was illegal and unjustified. While seeking industrial adjudication, the workman has claimed for his reinstatement in service with full back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that M/s. Konark Jute Limited is a company registered under the Companies Act and as such, a separate legal entity in the eye of law. The I.D.C. of Orissa Limited is purely a Government undertaking whereas the present management is a company by joint venture of NAFED, New Delhi & IDCOL, Orissa. The workman after being relieved from the I.D.C. on tendering his resignation was offered a fresh appointment in the establishment of the management vide letter No. 756-KJ, dated the 1st November 1975 on the terms and conditions stipulated therein. As such, the service rendered by the workman under the I.D.C. was no bearing with the subsequent employment under the present management. It is categorically averred in the written statement that consequent upon the illegal strike causing eminent danger to the life and property of supervisory personnel the management declared a lock-out in the Mill with effect from the 11th October 1983. The said lock-out was lifted in a phased manner with effect from the 25th April 1984 by virtue of a tripartite settlement, dated the 14th April 1984. Inspite of several verbal cautions, the workman continued to remain absent frequently from his duty spot and neglected in performing his duties causing serious dislocation of work which compelled the management to issue charge-sheet against him on the 2nd February 1984. The workman accordingly submitted his explanation denying the charges levelled against him but it was found unsatisfactory. The management being not satisfied with the explanation submitted by the workman decided to hold a regular domestic enquiry by appointing Shri J. K. Tripathy, Advocate as Enquiring Officer. The workman was placed under suspension with effect from the 25th April 1984 pending enquiry into the charges levelled against him. During enquiry all the charges were duly proved before fair and proper enquiry in compliance with the principles of natural justice. According to the management the domestic enquiry was fairly and properly conducted by the Enquiring Officer and all the charges levelled against the workman were well proved. The management after careful consideration of the enquiry report submitted by the Enquiring Officer passed final order of dismissal. Accordingly, the workman was dismissed from service with effect from the 22nd December 1984. He was also paid one month's wages. It is averred

that the action of the management in dismissing the workman from service with effect from the 22nd December 1984 was legal, fair and justified and in such circumstances he is not entitled for any relief. On the above back grounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the dismissal of the second party workman from service by the first party management with effect from the 22nd December 1984 is legal and/or justified ?
- (ii) To what relief, if any, the second party workman is entitled ?
- (iii) Whether the domestic enquiry conducted against the workman is fair and proper ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon series of documents marked as Exts. A to N/1 respectively. On the other hand, the management has examined as many as three witnesses namely, Shri Surendra Mohan Patnaik, Shri Jugal Kishore Tripathy and Shri Nirakar Pradhan as M. Ws. 1 to 3 and have relied upon the voluminous documents marked as Exts. 1 to 14/C respectively in support of its case.

FINDINGS

7. *Issue No. (iii)*—In the case at hand the issue No. (iii) regarding the fairness of the domestic enquiry has been treated as preliminary issue and the same has been decided by this Court on the 19th January 1991. While deciding Issue No. (iii) this Court has arrived at a conclusion that the enquiry conducted by the Enquiring Officer against the workman is fair and proper. Since the Issue No. (iii) has already been decided it needs no further discussion in the present case.

8. *Issue Nos. (i) and (ii)*—In support of their respective cases both the management as well as the workman concerned on the above issues have adduced evidence. The evidence led by the management goes to prove that the acts of misconducts are duly proved against the workman before fair and proper enquiry in compliance with the principles of natural justice. But taking a total view of the material on record including the evidence adduced before this Court, I am of the considered view that the workman had not indulged in violation of serious acts of misconducts justifying the extreme penalty of dismissal.

A very large discretion is conferred on this Court and the Industrial Tribunal Under Section 11-A of the Act. It is the jurisdiction or discretion of the Labour Court to put certain terms and conditions, if a workman is to be reinstated. The Labour court is also empowered to award any lesser punishment in lieu of discharge or dismissal. It is, therefore, clear that the Labour Court is given absolute discretion to pass appropriate orders considering the totality of the facts and circumstances before it. There is nothing in the said Section 11-A of the Act that the Labour Court is not empowered to mould the relief including the question of punishment. It can inflict a lesser punishment also. The Labour Court can reduce the punishment of dismissal and can inflict a punishment of lesser gravity, which can also be denial of backwages as a

term or condition as reinstatement. The Section 11-A of the Act conferred very wide discretion on the Lanour Court and Tribunal to put such terms and conditions while granting order of reinstatement.

Taking an overall and total view of the material on record including the evidence adduced before this Court I am of the view that the misconducts are duly proved before fair and proper enquiry in compliance with the principles of natural justice but taking into consideration the circumstance narrated in the present case, the punishment inflicted on the workman is shockingly disproportionate with the gravity of misconduct committed by him. No doubt the misconduct are proved, but I am led to hold that, the punishment of dismissal already imposed on the workman is not justified because the misconducts alleged and proved are such as does not warrant the extreme penalty of dismissal. In my considered view the punishment is out of proportion and therefore, the punishment of dismissal deserves to be set aside. In that view of the matter the workman concerned is entitled for relief.

Both the above issues are answered accordingly

Hence it is ordered.

ORDER

That the punishment of dismissal of Shri Subal Charan Mohanty, Store Clerk from service by the management of M/s. Konark Jute Limited, Dhanmandal with effect from the 22nd December 1984 deserves and is accordingly hereby set aside. In the meanwhile the workman concerned has already reached the age of superannuation. In that view of the matter, the ends of justice would be best served, if the workman concerned be awarded with a lump sum compensation of Rs. 40,000 (Rupees Forty Thousands) only in lieu of reinstatement and back wages.

The reference is thus answered accordingly

Dictated and corrected by me.

P. K. SAHOO
28-6-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
28-6-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government